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ASIAN INTERNATIONAL ARBITRATION CENTRE

IN KUALA LUMPUR, MALAYSIA

MEMORIAL FOR THE CLAIMANT

CLAIMANT

THE FEDERATION OF PALMENNA

V.

RESPONDENT

CANSTONE Ltd.

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STATEMENT OF JURISDICTION

The Claimant (Federation of Palmenna) have submitted the dispute to the International Arbitration Centre (AIC), Kuala Lumpur, Malaysia pursuant to Article 12(c) Palmenna Kenweed Bilateral Investment Treaty (PK-BIT) in accordance with the Rule 1.1 of Arbitration rules of Asian International Arbitration Centre (AIAC) which states:

“1.1. Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules, then: (a) such dispute shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules;”

Therefore, the Federation of Palmenna and Canstone Ltd. have accepted the jurisdiction of the International Arbitration Centre and agreed to accept the award of the Arbitrator as final and binding

QUESTIONS PRESENTED

- I. Whether the pre-arbitration steps must be complied before arbitration proceedings may be commenced by the Federation of Palmenna against Canstone;
- II. Whether the Federation of Palmenna is precluded from initiating an arbitration against Canstone;
- III. Whether Canstone had breached its obligations under the PK-BIT; and
- IV. If the answer to issue III is in the affirmative, whether Palmenna is entitled to an award of declaration and damages.

STATEMENT OF FACTS

1. The Federation of Palmenna and Canstone Fly **Ltd** are the parties involved in this arbitration. Palmenna is a country with extensive palm oil plantations, while Canstone Fly Ltd is a company engaged in biofuel operations in two cities in Palmenna: Appam and Karheis.
2. M Akbar, as the Prime Minister of Palmenna, collaborated with Prime Minister Gan of Kenweed, resulting in a Memorandum of Understanding (“**MOU**”) between Palmenna and Kenweed. This MOU outlined five key principles and commitments agreed upon by both parties and was formalized into the Palmenna-Kenweed Bilateral Investment Treaty (PK-BIT) on October 3, 2021.
3. Following the success of the PK-BIT, Canstone Ltd was established, with 70% ownership held by Mehstone Ltd and 30% by SZN. Mehstone Ltd is a Kenweed-based company owned by Prime Minister Gan and Tara Sharma. Thus, the investors in Canstone Ltd include Luke Nathan, Tara Sharma, and Prime Minister Gan, with Alan Becky appointed as Quality Control (QC).
4. In February 2023, Canstone received an unsigned notice indicating a potential leak from one of the tanks used at the Karheis plant for storing processed palm oil, which had been depleted through transesterification. However, Alan Becky dismissed this as a hoax, stating there were no signs of leakage, and thus no further investigation was conducted.
5. On September 6, 2023, following the incident at Karheis, a Canstone board meeting was held with the attendance of Luke Nathan and Tara Sharma. Alan Becky, as QC, and Luke Nathan, as senior management, requested additional resources for a comprehensive inspection and potential upgrades to raw material processing equipment, fermentation tanks, reactors, storage tanks, and power generation equipment. Alan also requested an Environmental Impact Assessment (EIA) on behalf of Canstone by hiring a consulting firm.

As an experienced professional, Alan emphasized the need for qualified local personnel with expertise in environmental science, ecology, engineering, and related fields to ensure proper isolation for Canstone. The board was expected to provide a response by December 15.

6. Since early November, Palmenna experienced heavy rain for several days, posing a risk of flooding in the rural areas of Karheis. This led Alan to travel to Karheis on November 23, 2023, to oversee the monitoring and control systems of the storage tanks. Meanwhile, a neighboring factory in Appam closed operations for the next three days, while Canstone continued operations as usual.
7. On November 26, 2023, the situation in Appam worsened, leading to severe flooding with water accumulating on streets and low-lying areas. This affected the Appam factory facilities, requiring an additional day for the floodwaters to recede compared to other areas in Appam.
8. As a result, 129 individuals in Appam suffered respiratory injuries, with 39 requiring hospitalization. According to doctors, these injuries were caused by inhaling irritating gases or exposure to corrosive chemicals flowing through inland river waters. Among those hospitalized, 13 were employees at the Canstone Appam plant.
9. The incident sparked public outcry, prompting an emergency board meeting at Canstone and an investigation into its facilities. The investigation revealed that the pressure relief valve on the storage tank was damaged, likely due to the impact of the floodwaters.
10. Canstone's internal doctor, who treated several affected employees, stated that it could not be concluded whether the infections were caused by the damaged relief valve or not.
11. On December 15, 2023, activists brought the issue to court, suing the Federation of Palmenna and SZN for negligence. The Federation of Palmenna argued that the issues around the Canstone facility were not its responsibility. On the other hand, SZN argued

that responsibility should solely lie with the Federation of Palmenna. On February 14, 2024, the High Court ruled that both the Federation of Palmenna and SZN were jointly liable for negligence and ordered compensation to be paid to the victims of the incident. In response to this ruling, both the Federation of Palmenna and SZN filed appeals.

12. On March 1, 2024, Prime Minister Akbar held a conference call with Tara Sharma, Alan Becky, and Luke Nathan to seek a solution. However, the discussion ended without resolution, leaving the issue unresolved.
13. On March 6, 2024, the Federation of Palmenna initiated arbitration against Canstone under Article 12 of the PK-BIT, claiming that Canstone had been negligent and violated the PK-BIT. In its response, Canstone argued that the Federation of Palmenna had failed to utilize pre-arbitration steps as required by Article 12, and that arbitration was merely being used as a tool to overturn the High Court's decision.

SUMMARY OF PLEADINGS

I. WHETHER THE PRE-ARBITRATION STEPS MUST BE COMPLIED BEFORE ARBITRATION PROCEEDINGS MAY BE COMMENCED BY THE FEDERATION OF PALMENNA AGAINST CANSTONE;

Pre-arbitration steps serve as the initial phase before starting formal arbitration proceedings. The Federation of Palmenna has implemented these pre-arbitration steps effectively. First, they marked this phase with provisions governing arbitration in the PK-BIT contract. Second, the Federation of Palmenna pursued pre-arbitration by conducting a conference call with the opposing party to seek a solution, although this did not reach a final resolution. Third, the Federation of Palmenna filed a registration and formal application with the Arbitration Tribunal, specifying the use of and adherence to the AIAC 2023 Rules, as the previous pre-arbitration efforts did not resolve the issue. They submitted this application along with relevant documents, strong evidence, and other forms of proof.

II. WHETHER THE FEDERATION OF PALMENNA IS PRECLUDED FROM INITIATING AN ARBITRATION AGAINST CANSTONE;

The Federation of Palmenna's decision to commence arbitration against Canstone is both procedurally and substantively sound, as it meticulously adhered to the dispute resolution framework set forth in Article 12 of the PK-BIT. Following the failure of initial negotiations and Canstone's refusal to participate in mediation, Palmenna was compelled to invoke its right to arbitration under the treaty. This course of action is consistent with the established norms of international arbitration and reflects a judicious application of the treaty's provisions. By submitting the dispute to the Asian International Arbitration Centre (AIAC) in Kuala Lumpur,

III. WHETHER CANSTONE HAD BREACHED ITS OBLIGATIONS UNDER THE PK-BIT

Sulfur dioxide (SO₂) is an irritant gas at concentrations above 250 ug/m³, which can cause respiratory issues. Sources of SO₂ include the burning of sulfur-containing fuels. Sulfur dioxide irritates the skin and mucous membranes of the eyes, nose, throat, and lungs. High concentrations of SO₂ can lead to inflammation and irritation of the respiratory system, especially during intense physical activity.

Given the significant environmental impact, Canstone must employ a qualified expert to conduct an Environmental Impact Assessment (EIA) and submit the EIA report to the Ministry, in accordance with Article 4 of the PK-BIT. In practice, Canstone Ltd does not have an EIA expert but only an internal specialist assigned to carry out brief environmental assessments and reports on the condition of machinery and equipment.

IV. IF THE ANSWER TO ISSUE III IS IN THE AFFIRMATIVE, WHETHER PALMENNA IS ENTITLED TO AN AWARD OF DECLARATION AND DAMAGES.

Based on the case between Palmenna and Canstone, it is clear that Canstone has violated Articles 4 and 5 of the PK-BIT by failing to construct a drainage system in accordance with the established regulations and by not having an Environmental Impact Assessment (EIA) expert responsible for preparing environmental impact analysis reports. This is fundamentally important for both the company and the surrounding environment in the event of any unforeseen incidents. Therefore, the Federation of Palmenna is entitled to seek compensation from Canstone for not adhering to the agreement made between both parties.

PLEADINGS

I. THE FEDERATION OF PALMENNA UNDERTAKES AND ADHERES TO PRE-ARBITRATION STEPS BEFORE COMMENCING THE ARBITRATION PROCESS

Pre-arbitration steps serve as the initial phase before starting formal arbitration proceedings. The Federation of Palmenna has implemented these pre-arbitration steps effectively. First, they marked this phase with provisions governing arbitration in the PK-BIT contract, which includes a written statement indicating that arbitration is a viable method for resolving disputes and issues. This statement was also agreed upon and signed by both The Federation of Palmenna and The Independent State of Kenweed (Canstone). Second, the Federation of Palmenna pursued pre-arbitration by conducting a conference call with the opposing party to seek a solution, although this did not reach a final resolution. This also indicated efforts at peaceful settlement through mediation and negotiation. Third, the Federation of Palmenna filed a registration and formal application with the Arbitration Tribunal, specifying the use of and adherence to the AIAC 2023 Rules, as the previous pre-arbitration efforts did not resolve the issue. They submitted this application along with relevant documents, strong evidence, and other forms of proof. Finally, the Federation of Palmenna paid all material requirements to resolve the dispute through arbitration under the AIAC 2023 Rules.

PRE-ARBITRATION EFFORTS OF THE FEDERATION OF PALMENNA

1. Bilateral Investment Treaty Between The Federation of Palmenna and The Independent State of Kenweed (“**PK-BIT**”). The Federation of Palmenna implements pre-arbitration measures as outlined in Article 12 of the PK-BIT, which states that “*Any dispute between the Parties arising from, relating to or in connection with this BIT shall be referred, first, to the higher management of Parties in an attempt to settle such*

*dispute by amicable and good faith negotiation”*¹. In practice, the Federation of Palmenna tried to resolve the dispute through the High Court. However, the court’s decision did not satisfy the Federation of Palmenna, leading them to apply point (a) of Article 12 of the PK-BIT. This was marked by a closed meeting with Canstone, but they did not find a solution. Consequently, the Federation of Palmenna pursued the dispute resolution process outside the court, specifically through arbitration

2. The Federation of Palmenna, represented by M. Akbar, engaged in pre-arbitration efforts through a conference call involving Tara Sharma, Alan, and Luke Nathan. M. Akbar, representing the Federation of Palmenna, sought a solution to the issues at hand, which aligns with the statement in the Guide to the AIAC Arbitration Rules within the Asian International Arbitration Centre Rules 2023 (“**AIAC 2023**”) that states “*Before referring the dispute to arbitration, the Parties shall attempt to seek an amicable settlement of that dispute by mediation within 30 days of the dispute arising in accordance with the AIAC Mediation Rules as in force on the date of the commencement of mediation*”.² “*Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the AIAC Arbitration Rules.*”³
3. The Federation of Palmenna engaged in mediation efforts with Canstone, even though the discussions reached an impasse and tensions escalated further. These efforts align with the provisions of Article 12, point (b) of the PK-BIT, which states that “*second, if the dispute is not resolved via negotiation, to mediation*”⁴
4. The Federation of Palmenna chose to resolve the dispute through arbitration because the pre-arbitration efforts with Canstone did not yield a satisfactory outcome, as

¹ Article 12 (1) Palmenna Kenweed Bilateral Investment Treaty

² Guide in Asian International Arbitration Centre 2023

³ Guide in Asian International Arbitration Centre 2023

⁴ Article 12 (b) Palmenna Kenweed Bilateral Investment Treaty

outlined in Article 12, point (c) of the PK-BIT, which states that “*third, if the dispute is not resolved through mediation within 90 (ninety) days from the commencement of the mediation to arbitration administered by the Asian International Arbitration Centre (AIAC) in accordance with its prevailing arbitration rules at the time of the dispute.*”⁵

On March 6, 2024, the Federation of Palmenna initiated arbitration proceedings against Canstone under Article 12 of the PK-BIT. The Federation of Palmenna has paid the required deposit and fees to the AIAC according to the AIAC 2023 Rules. The Federation chose arbitration because the pre-arbitration efforts with Canstone did not yield a satisfactory result, as stated in point (c) of Article 12 of the PK-BIT. The PK-BIT agreement also specifies that dispute resolution through arbitration refers to and adheres to the provisions of the AIAC 2023 Rules. Therefore, the AIAC rules will serve as the guide for resolving this dispute.

5. Another statement indicates that “*(1) Unless otherwise agreed by the parties, the arbitral tribunal may —*
 - (a) Appoint one or more experts to report to it on specific issues to be determined by the tribunal; and*
 - (b) Require a party to give the expert any relevant information or to produce, or to provide access to, any relevant.*”⁶

RESOLUTION OF THE CASE USING ARBITRATION

6. The Statutes Of The Republic Of Singapore Arbitration Act 2001 article 2 poin 1 (“**ARBITRATION ACT 2001**”) “ In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have

⁵ Article 12 (c) Palmenna Kenweed Bilateral Invesment Treaty

⁶ Article 27 (1) Arbitration Act 2001

arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.”⁷

7. Article 2 Poin 1 New York Covention 1958 (“**NYC 1958**”). “Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.”⁸
8. An arbitration agreement must be in writing.⁹ “*The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.*”¹⁰ In this Act, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.¹¹
9. AIAC 2023 governs all provisions related to the dispute between the Federation of Palmenna and Canstone, as outlined in General Provisions Rule 1, point 1, which states that “*Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules*”.¹²
10. Other rules specify in Rule 1 - General, point 5 of the UNCITRAL Arbitration Rules 2021 (“**UNCITRAL 2021**”), which states: “*For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty- based Investor-State*

⁷ Article 2 (1) Arbitration Act 2001

⁸ Article 2 (1) New York Covention 1958

⁹ Article 2 (3) Arbitration Act 2001

¹⁰ Article 2 (2) New York Covention 1958

¹¹ Part 2 Article 4 (1) Arbitration Act 2001

¹² General 1 Arcticle 1 Asian International Arbitration Centre 2023

Arbitration (“Rules on Transparency”), subject to article 1 of the Rules on Transparency.”¹³

11. Part II, Section 1, Article 1 of the UNCITRAL 2021 states that *“Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree”*.¹⁴
12. Since the parties to the agreement PK-BIT have agreed in writing to arbitration under AIAC 2023, as detailed in Part 1 of the AIAC Arbitration Rules General, which states that *“Where the Parties have agreed in writing, by an arbitration agreement or otherwise, to refer their dispute to arbitration in accordance with the AIAC Arbitration Rules, then:*
 - (a) such dispute shall be settled or resolved by arbitration in accordance with the AIAC Arbitration Rules;*
 - (b) the arbitration shall be conducted and administered by the AIAC in accordance with the AIAC Arbitration Rules.*¹⁵

Technical guidelines related to all provisions in this matter will refer to AIAC 2023. This article serves as a reference for the application of AIAC rules due to the dispute between the Federation of Palmenna and Canstone, which did not find a final solution in the pre-arbitration phase.

13. Should either party in the arbitration agreement initiate any legal proceedings in any court against the other party in relation to any matter covered by the agreement, then the party to the agreement may, at any time after filing and serving a notice of intent to

¹³ Section 1 Article 1 Uncitral 2021

¹⁴ Part II Section 1 Article 1 Uncitral 2021

¹⁵ Part 1 Asian International Arbitration Centre 2023

sue or not to sue and before submitting any defense (other than a defense claiming that the court lacks jurisdiction in the proceeding) or taking any other action in the proceeding, request the court to stay the proceedings as long as the proceeding relates to the matter in question.¹⁶

OTHER PRE-ARBITRATION PROVISIONS

14. One pre-arbitration requirement is “proof of payment of the non-refundable registration fee, as prescribed in Schedule 2, Clause 4”. The Federation of Palmenna has paid the deposit and necessary fees to the AIAC in accordance with the AIAC 2023 Rules. Based on this payment, the Federation of Palmenna is entitled to receive services for the arbitration dispute resolution process through the AIAC.

COSTS OF ARBITRATION

15. *Any costs directed by an award to be paid are, unless the award otherwise directs, to be assessed by the Registrar of the Supreme Court within the meaning of the Supreme Court of Judicature Act 1969. Subject to subsection (3), any provision in an arbitration agreement to the effect that the parties or any party must in any event pay their or his, her or its own costs of the reference or award or any part thereof is void; and this Act, in the case of an arbitration agreement containing any such provision, has effect as if there were no such provision.*¹⁷

II. WHETHER THE FEDERATION OF PALMENNA IS PRECLUDED FROM INITIATING AN ARBITRATION AGAINST CANSTONE;

The Federation of Palmenna’s decision to commence arbitration against Canstone is both procedurally and substantively sound, as it meticulously adhered to the dispute

¹⁶ Part III Arbitration Act 2001

¹⁷ Part VIII Article 39 Arbitration Act 2001

resolution framework set forth in Article 12 of the PK-BIT. Following the failure of initial negotiations and Canstone's refusal to participate in mediation, Palmenna was compelled to invoke its right to arbitration under the treaty. This course of action is consistent with the established norms of international arbitration and reflects a judicious application of the treaty's provisions. By submitting the dispute to the Asian International Arbitration Centre (AIAC) in Kuala Lumpur, The Federation of Palmenna has ensured compliance with the agreed-upon arbitral forum, thus upholding the integrity of the dispute resolution process and reinforcing its claim for a legally binding resolution.

THE FEDERATION OF PALMENNA HAS TAKEN PRE-ARBITRATION STEPS.

1. The Federation of Palmenna has prudently followed to the procedural framework established under Article 12 of the PK-BIT, initiating the requisite pre-arbitration measures designed to foster dispute resolution through negotiation and mediation. Despite these diligent efforts, the pre-arbitration process proved insufficient in producing a mutually acceptable outcome. Given this impasse, The Federation of Palmenna appropriately invoked its right to arbitration, as prescribed under the jurisdictional provisions of Article 12. This course of action aligns with the treaty's legal mandate and reflects a methodical progression towards achieving an equitable resolution within the framework of international arbitration norms.

Article 12: Dispute Resolution

Any dispute between the Parties arising from, relating to or in connection with this BIT shall be referred:

- (a) first, to the higher management of Parties in an attempt to settle such dispute by amicable and good faith negotiation;

- (b) second, if the dispute is not resolved via negotiation, to mediation;
- (c) third, if the dispute is not resolved through mediation within 90 (ninety) days from the commencement of the mediation to arbitration administered by the Asian International Arbitration Centre (AIAC) in accordance with its prevailing arbitration rules at the time of the dispute:
- i. each of the Parties hereto shall be entitled to appoint one (1) arbitrator and the two (2) arbitrators shall agree on a third arbitrator.
 - ii. in the event an agreement on the third arbitrator cannot be reached, the third arbitrator shall be appointed by the Director for the time being of the AIAC.
 - iii. unless the Parties otherwise agree, arbitrators shall not be nationals of a Party.
 - iv. the seat of the arbitration shall be Kuala Lumpur, Malaysia.
 - v. such an arbitration shall be held in the English Language.¹⁸

2. The Federation of Palmenna, under the direction of Prime Minister M. Akbar, commenced its dispute resolution efforts by initiating formal negotiations with representatives of Canstone on March 1, 2024.¹⁹ This process, which included the participation of key stakeholders such as Tara Sharma, Alan, and Luke Nathan,²⁰ was undertaken in full compliance with the provisions of Article 12(a) of the PK-BIT. The aim of these negotiations was to engage in good faith discussions to identify mutually acceptable solutions to the dispute. Nevertheless, despite The Federation Of Palmenna concerted efforts to facilitate a constructive dialogue, the parties were unable to reach a consensus or formulate any form of agreement. This deadlock necessitated a further

¹⁸ Palmenna Kenweed Bilateral Investment Treaty.

¹⁹ Moot Problem, [49].

²⁰ Moot Problem, [49].

escalation of the dispute resolution process, in accordance with the procedural framework set forth in the treaty.

3. Following the unsuccessful negotiations²¹, The Federation of Palmenna, in strict adherence to the dispute resolution mechanisms outlined in Article 12(b) of the PK-BIT, pursued mediation as the prescribed second step. Mediation, intended to provide the parties with a more structured forum for resolving their differences, was initiated in good faith by Palmenna with the hope of achieving a more favorable outcome. However, this process was ultimately frustrated by Canstone's refusal to engage in mediation proceedings. Canstone's non-participation not only contravened the spirit of amicable resolution envisaged by the treaty but also compelled The Federation of Palmenna to proceed toward the final stage of arbitration, as delineated in the BIT framework.
4. In light of the failure of the mediation process, The Federation of Palmenna was left with no viable alternative but to initiate arbitration proceedings to resolve the ongoing dispute.²² This decision, rooted in both necessity and adherence to the procedural directives of the PK-BIT, reflects Palmenna's commitment to seeking a definitive and legally binding resolution. The Federation's decision to advance the dispute to arbitration was not taken lightly but was a measured response to Canstone's refusal to engage in the prior stages of the dispute resolution process. Consequently, Palmenna submitted its formal claim for arbitration in accordance with the established international protocols, thereby invoking its rights under the treaty.
5. The Asian International Arbitration Centre (AIAC), in Kuala Lumpur, was duly designated as the arbitral forum for resolving this dispute, in accordance with the

²¹ Moot Problem, [51].

²² Moot Problem, [54].

provisions of Article 12 of the PK-BIT. Both parties, through their mutual consent under the treaty, had previously agreed that any arbitration arising out of their investment relationship would be conducted under the auspices of the AIAC. Furthermore, it was explicitly stipulated that the arbitration would proceed in English, with Kuala Lumpur, Malaysia, serving as the official seat of arbitration. This arrangement reflects the parties' deliberate choice of a neutral, internationally recognized arbitration body and jurisdiction, which ensures both procedural integrity and adherence to globally accepted arbitration norms.

Rule 18 – Costs

“The term “costs” as specified in Article 40 shall also include the expenses reasonably incurred by the AIAC in connection with the arbitration, the administrative fees of the AIAC, as well as the costs of the facilities made available by the AIAC under Rule 13.”

The Federation of Palmenna paid the arbitration fees²³ in accordance with Article 18 of the AIAC rules regarding the arrangement of arbitration costs, which details the expenses incurred in handling the matter by AIAC arbitration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal

²³ Moot Problem, [54].

relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.²⁴

Based on this, The Federation of Palmenna has the right to submit the dispute for resolution through arbitration, as stipulated in Article 12 of the PK-BIT.

6. The Federation of Palmenna believes that Canstone violated the provisions of the PK-BIT and was negligent, leading to respiratory infections among the population and causing losses to The Government.²⁵ In this regard, the dispute brought by The Federation of Palmenna to arbitration is justified, as pre-arbitration steps were not feasible given the escalating tensions. Hence, The Federation of Palmenna chose arbitration as the means to resolve the issue with Canstone, in line with Article 12 of the PK-BIT on dispute resolution, referring to the AIAC jurisdiction agreed upon in the investment cooperation between The Federation of Palmenna and Canstone.
7. In conclusion, The Federation of Palmenna is not prohibited from submitting the dispute to arbitration, as arbitration is the appropriate step. Furthermore, the pre-arbitration process became impractical. Arbitration is the method agreed upon by The Federation of Palmenna and Canstone in Article 12 of the PK-BIT. The points discussed above provide strong arguments supporting The Federation of Federation of Palmenna's decision to file a claim against Canstone through arbitration at AIAC, Kuala Lumpur, Malaysia.

²⁴ AIAC ARBITRATION RULES 2023

²⁵ Moot Problem, [55].

III. WHETHER CANSTONE HAD BREACHED ITS OBLIGATIONS UNDER THE PK-BIT

1. The Federation of Palmenna is a British Commonwealth country with diverse geographical landscapes, including coastal plains, mountains, and tropical rainforests. This results in Palmenna having two distinct seasons: the southwest monsoon from May to September and the northeast monsoon from November to February. The climate and geography of Palmenna make it an optimal region for palm oil cultivation. This has also made Palmenna one of the world's leading palm oil producers. In 2020, Palmenna exported about 15 million metric tons of palm oil and palm-based products, valued at USD 35 billion.²⁶
2. Kenweed is a sovereign country with geographical features including northern mountains, central highlands, and southern tropical beaches and islands. With its rich natural conditions, tourism is a significant sector for Kenweed.²⁷ Under the leadership of Prime Minister Gan, Kenweed has become a country focused on trade and investment by establishing the Ministry of Trade and Investment (MTI), which operates directly under his authority. To achieve his goals, Prime Minister Gan has engaged several major companies from Kenweed to invest in the country.²⁸
3. As the new Prime Minister of Palmenna, M Akbar initiated several foreign visits, including to Kenweed, a country geographically close to Palmenna.
4. Palmenna and Kenweed established cooperation through an MOU formalized on August 27, 2021, outlining five key principles and commitments agreed upon by both

²⁶ Moot Problem, [1]

²⁷ Moot Problem, [3].

²⁸ Moot Problem, [5].

countries.²⁹ Two months later, an agreement was signed between the two countries in the Palmenna-Kenweed Bilateral Investment Treaty (PK-BIT).³⁰

5. The Federation of Palmenna and the State of Kenweed are parties to the 1969 Vienna Convention on the Law of Treaties.³¹ As part of the Vienna Convention, both countries are required to adhere to the regulations outlined in the PK-BIT.³² The establishment of the PK-BIT has realized the ideas previously proposed by Prime Minister Gan, Prime Minister Akbar, and Tara Sharma with the creation of Canstone Fly Limited, 70% owned by Mehstone Ltd and the remainder by SZN.³³
6. In facts, PK-BIT is not accessible to all parties. Only Prime Minister Gan, shareholders including Tara Sharma and Luke Nathan, and the board of directors of Canstone Ltd have access.³⁴ Based on this, those with access are expected to implement all provisions outlined in the PK-BIT. Canstone Ltd operates in the biofuel sector, combining palm biodiesel with petroleum diesel, which has lower sulfur content and reduced carbon buildup in diesel engines. Petroleum diesel is a fuel that contains sulfur. Sulfur dioxide (SO₂) is an irritant gas at concentrations above 250 ug/m³, which can cause respiratory issues. Sources of SO₂ include burning fuel containing sulfur.
7. Despite having lower sulfur content, sulfur can still impact the environment, including water pollution, temperature changes, and acid rain. Sulfur dioxide irritates the skin and mucous membranes of the eyes, nose, throat, and lungs. High concentrations of SO₂ can cause inflammation and irritation of the respiratory system, particularly during intense physical activity. People with lung diseases, such as asthma, chronic bronchitis, and emphysema, generally experience more severe health effects at higher SO₂ levels.

²⁹ Moot Problem, [16].

³⁰ Moot Problem, [20].

³¹ Clarification, [4].

³² Vienna Convention of Law Treaties 1969

³³ Moot Problem, [21].

³⁴ Clarification, [6].

Children are at higher risk from SO₂ exposure due to their developing lungs and higher likelihood of asthma, which can worsen with SO₂ exposure. Older adults may be more affected by SO₂ exposure, possibly due to pre-existing lung or cardiovascular conditions. Active individuals of all ages who exercise or work outdoors have higher exposure to sulfur dioxide than less active people.

8. Given the significant environmental impact, Canstone must have a qualified expert to conduct an Environmental Impact Assessment (EIA) and report it to the Ministry, as per Article 4 of the PK-BIT.

Any investor undertaking activities in a Party that might have significant environmental impacts must appoint a qualified person to conduct an environmental impact analysis and submit the report to the relevant ministry of that Party.³⁵

9. In facts, Canstone Ltd does not have an expert in EIA but only has an internal expert assigned to conduct brief environmental assessments and report on the condition of machinery and equipment. Since the incident in Karheis in December 2022, no EIA has been conducted by the company. Besides, Environmental impact assessment is one of the primary environmental regulatory mechanisms used by governments to protect the environment.³⁶ EIA processes ensure that critical information about the likely future impact on the environment of a project or industrial activity is available and considered in the decision-making process for this activity.³⁷

FACILITY DAMAGE

³⁵ Article 4 (1) Palmenna Kenweed Bilateral Investment Treaty

³⁶ Joseph, Chris, Thomas Gunton, and Murray Rutherford. 2015. "Good Practices for Environmental Assessment." *Impact Assessment and Project Appraisal* 33 (4): 238–254

³⁷ ADB (Asian Development Bank) and UNEP (United Nations Environment Programme). 2019. *Strengthening the Environmental Dimensions of the Sustainable Development Goals in the Asia Pacific Region*.

10. Alan Becky requested that the board of directors and senior officials of Canstone conduct a thorough inspection and potential upgrade of several factory facilities in Appam and Karheis, such as raw material equipment, fermentation units, reactors, storage tanks, and power generators. However, the board did not respond.³⁸
11. The board's failure to address this issue led to facility damage at the Appam factory, including the failure of the pressure relief valve on a storage tank. This resulted in ineffective ventilation, causing a dangerous buildup of pressure or fumes inside the storage tank.³⁹
12. The malfunction of the pressure relief valve affected 129 people, 39 of whom were hospitalized. Of those hospitalized, 13 were Canstone workers in Appam.⁴⁰ Doctors indicated that the respiratory infections were caused by inhaling irritating gases or exposure to corrosive chemicals flowing through inland waters or rivers.⁴¹ This situation occurred because the pressure relief valve on the storage tank failed, combined with a major flood, leading to the release of hazardous contents from the tank into the floodwaters. The high pressure buildup from the valve failure also caused SO₂ leakage into the air.
13. Meanwhile, the medical report issued by Dr. Ragu is deemed unreliable as Dr. Ragu is a Canstone doctor, raising concerns about potential attempts to shield the company from liability. Workers were affected because Canstone continued operations during the major flood in Appam, while two nearby factories were closed due to the flood.⁴²
14. Experts had previously warned about the vulnerability of the drainage system during floods and heavy rains, but Canstone did not take proactive measures regarding the

³⁸ Moot Problem, [33].

³⁹ Moot Problem, [39].

⁴⁰ Moot Problem, [36].

⁴¹ Moot Problem, [36].

⁴² Moot Problem, [40].

drainage system's weaknesses, which lacked capacity to handle large volumes of liquid.

This is not in accordance with Article 4(2), which states:

*Construction and expansion of artificial lakes with a surface area of 50 hectares or more within or near environmentally sensitive areas.*⁴³

ACTIVIST REPORTING

15. Reports made by activists were misdirected, as the Palmenna government was not involved in the Appam incident.⁴⁴ The Palmenna government has made every effort to protect its citizens from disasters. However, the recent flood was a major disaster exceeding government expectations.
16. The decision made by the High Court was incorrect as it involved the government in the responsibility for the impact on citizens from the Appam incident and required compensation. According to Jackey Jake, an employee of Canstone in Appam, Canstone was involved in bribery to cover up oil spill cases and inadequate oversight by Alan Becky, the quality control officer, leading to confirmed damage caused by Canstone's negligence.⁴⁵
17. Regarding the Appam incident, Prime Minister M Akbar stated that Canstone failed to comply with the PK-BIT, and the government bears no responsibility for the injuries and infections of people around the Canstone facility.

"This High Court ruling serves as a reminder that the judicial system operates independently. It does not make them right, but I appreciate their acknowledgment of the mistakes. You hold my promise that I will do what is necessary to overturn this decision. For me, it is very simple. There is an

⁴³ Article 4 (2) Palmenna Kenweed Bilateral Investment Treaty

⁴⁴ Moot Problem, [43].

⁴⁵ Moot Problem, [47].

agreement. If you do not adhere to its contents, you are at fault. Let's await the major revelation tomorrow."⁴⁶

18. During a conference call to seek a solution between M Akbar, Tara Sharma, and Luke Nathan on March 1, 2024, regarding the High Court's ruling, the discussion reached an impasse as Tara Sharma remained adamant about not admitting fault.⁴⁷

IV. IF THE ANSWER TO ISSUE III IS IN THE AFFIRMATIVE, WHETHER PALMENNA IS ENTITLED TO AN AWARD OF DECLARATION AND DAMAGES.

Based on the case between Palmenna and Canstone, it is clear that Canstone has violated Articles 4 and 5 of the PK-BIT by failing to construct a drainage system in accordance with the established regulations and by not having an Environmental Impact Assessment (EIA) expert responsible for preparing environmental impact analysis reports. This is fundamentally important for both the company and the surrounding environment in the event of any unforeseen incidents. Therefore, the Federation of Palmenna is entitled to seek compensation from Canstone for not adhering to the agreement made between both parties. This is also supported by Article 28, Paragraphs 1 and 8, which address compensation if all aspects of the damage can be proven and are indeed valid based on the case at hand.

FACILITY DAMAGE

1. Based on the case between Palmenna and Canstone, it is evident that Canstone violated Article 5 of the PK-BIT by constructing and expanding an artificial lake with a size of less than 50 hectares, and draining wetlands, wildlife habitats, or dry forests on a land area of 20 hectares.

⁴⁶ Moot Problem, [53].

⁴⁷ Moot Problem, [51].

2. The existing drainage system reveals weaknesses in its design and technical aspects, lacking the capacity to handle large volumes of liquid, especially during heavy rain and floods.
3. Prior to the heavy rain that led to flooding, experts had warned Canstone that its drainage system was vulnerable and did not comply with the standards set in the PK-BIT, but Canstone disregarded these warnings.
4. After the flood, the ventilation system was found to be malfunctioning and failing to meet safety standards. The ventilation system suffered from neglect and inadequate maintenance.
5. Canstone took a significant risk by choosing to continue operations during the major flood in Appam, while two nearby factories shut down during the flood.
6. Canstone neglected the Environmental Impact Assessment (EIA), even though Alan, who was responsible for Quality Control, advised the company of the importance of hiring an EIA expert. However, Tara Sharma, the CEO, seemed to delay the recruitment of this expert.
7. On November 26, a major flood occurred in the city of Appam, causing the area around the Appam factory facility to take more than a day for the floodwaters to fully recede.

DIRTY PLAY

8. Jakey's claim that Canstone was involved in bribery to cover up cases related to oil spills, and his revelation that Alan's negligence in his responsibilities was possibly coerced by the Federation of Palmenna as part of a deal between them.
9. Canstone did not have an EIA expert to prepare an environmental impact analysis report on its behalf, which clearly violates the agreement set forth in Article 4 of the PK-BIT,

which stipulates that any party or one of the parties that may cause significant environmental impact must appoint such an expert.

10. Another fact is that Alan, who was responsible for Quality Control at Canstone, failed to report the tank leakage problem that occurred in Appam.

DISASTER EFFECTS

11. After the flood subsided, residents near the Canstone facility were hospitalized for respiratory injuries. Doctors found that these injuries might have been caused by inhaling irritant gases or exposure to corrosive chemicals that flowed through the inland waterways or rivers. More than 129 people were affected in the area, with 39 hospitalized. Among the 39 hospitalized, 13 were employees working at Canstone's Appam factory facility. These patients exhibited similar symptoms and had difficulty breathing.
12. Before the flood, residents around the company's facility had never suffered from diseases caused by chemical exposure.
13. Following the incident in Appam, M. Akbar, the Prime Minister of Palmenna, stated that Canstone had failed to comply with the PK-BIT and that the Federation of Palmenna bore no responsibility for the injuries and infections suffered by affected residents around the Canstone facility.

COMPENSATION

14. Palmenna is entitled to compensation for the incident due to several aspects that demonstrate Canstone's violation of the PK-BIT and its disregard for the warnings given by experts. According to Article 28, Paragraphs 1 and 8, which discuss compensation if all aspects of the damage can be proven and are indeed true based on the case at hand.

PRAYER FOR RELIEF

In light of the submissions above, counsel for **CLAIMANT** respectfully requests the Tribunal:

1. The Federation of Palmenna has taken the appropriate steps and adhered to the procedural pre-arbitration requirements before initiating the arbitration process.
2. State that the Federation of Palmenna is not barred from initiating arbitration against Canstone, as this is provided for in the PK-BIT.
3. Declare that Canstone has properly and conclusively breached its obligations under the PK-BIT.
4. The Federation of Palmenna is entitled to compensation and damages resulting from Canstone's actions.

Respectfully Submitted,

Counsels for Claimant